

Department of State

§ 17.3

§ 16.14 Reconsideration of a grievance.

A grievant whose grievance is found not to be meritorious by the Board may obtain reconsideration by the Board only upon presenting newly discovered or previously unavailable material evidence not previously considered by the Board and then only upon approval of the Board.

§ 16.15 Judicial review.

Any aggrieved party may obtain judicial review of these regulations, and revisions thereto, and final actions of the agency head (or designee) or the Grievance Board hereunder, in the District Courts of the United States, in accordance with the standards set forth in chapter 7 of title 5 of the United States Code. Section 706 of title 5 shall apply without limitation or exception.

PART 17—OVERPAYMENTS FROM THE FOREIGN SERVICE RETIREMENT AND DISABILITY FUND UNDER THE FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM (FSRDS) AND THE FOREIGN SERVICE PENSION SYSTEM (FPS)

Sec.

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AUTHORITY: 22 U.S.C. 4047(d); 22 U.S.C. 4071(b); 5 U.S.C. 8470(b); 5 CFR 845.301-07.

SOURCE: 71 FR 16229, Mar. 31, 2006, unless otherwise noted.

§ 17.1 General.

This part establishes procedures for notifying individuals of their rights if they have received an overpayment from the Foreign Service Retirement and Disability Fund under Chapter 8 of the Foreign Service Act of 1980, as amended, including their right to contest the determination that there has been an overpayment and the right to request a waiver of recovery of the

overpayment. This part also provides the procedures for administrative determination of these rights and for appeals of negative determinations.

§ 17.2 Conditions for waiver of recovery of an overpayment.

(a) *Foreign Service Retirement and Disability System.* Recovery of an overpayment from the Foreign Service Retirement and Disability Fund under the Foreign Service Retirement and Disability System may be waived pursuant to section 4047(d), of title 22, United States Code when the individual is without fault and recovery would be against equity and good conscience or administratively infeasible.

(b) *Foreign Service Pension System.* Recovery of an overpayment from the Foreign Service Retirement and Disability Fund under the Foreign Service Pension System may be waived pursuant to section 4071(b) of title 22, United States Code and section 8470(b) of title 5, United States Code when the individual is without fault and recovery would be against equity and good conscience.

(c) When it has been determined that the recipient of an overpayment is ineligible for waiver, the individual is nevertheless entitled to an adjustment in the recovery schedule if he or she shows that it would cause him or her financial hardship to make payment at the rate scheduled.

§ 17.3 Fault.

A recipient of an overpayment is without fault if he or she performed no act of commission or omission that resulted in the overpayment. The fact that the Department of State or other agency may have been at fault in initiating an overpayment will not necessarily relieve the individual from liability.

(a) *Considerations.* Pertinent considerations in finding fault are—

(1) Whether payment resulted from the individual's incorrect but not necessarily fraudulent statement, which he/she should have known to be incorrect;

(2) Whether payment resulted from the individual's failure to disclose material facts in his/her possession which